

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to appeals

The Human Services Department hereby amends Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 217.6.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 217.6 and 42 CFR 438.424.

Purpose and Summary

Federal regulations recently changed the time frame within which individuals would be allowed to file a request for a state fair hearing regarding managed care organization appeals. The time frame has been extended from 90 days to 120 days. These amendments update the time that individuals have to file a state fair hearing request regarding a managed care organization decision.

Federal regulations also changed the effectuation of a reversed appeal resolution for managed care organization appeals. Federal regulations indicate that if a state fair hearing officer reverses a managed care organization’s decision to deny, limit or delay services that were not furnished while the appeal was pending, the managed care organization must authorize or provide the disputed services promptly and expeditiously as the enrollee’s health condition requires but no later than 72 hours from the date the managed care organization receives notice reversing the determination. The federal regulation previously did not include the 72-hour requirement. These amendments are updated to include this requirement.

In a previous rule making, the Department adopted amendments removing the requirement that Notices of Hearing for an intentional program violation be mailed both by certified mail and by first-class mail. However, after those amendments were adopted, the Department realized a second reference to the certified mail requirement had erroneously not been removed. The remaining reference to the certified mail requirement is removed in these amendments to eliminate confusion.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 28, 2018, as **ARC 3652C**. The Department received no comments from the public. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on April 11, 2018.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. There have been recent changes in federal regulations regarding state fair hearings for managed care organization appeals. These amendments bring the Department’s rules into alignment with the federal regulations. These amendments are beneficial to the Department’s customers and to Department staff.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

These amendments do not include waiver provisions because the amendments confer benefits on those affected and because the amendments are generally required by federal law that does not allow for waivers. Individuals may request a waiver under the Department's general rule on exceptions at rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on July 1, 2018.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 7.5(4) as follows:

7.5(4) Time limit for granting hearing to an appeal. Subject to the provisions of subrule 7.5(1), when an appeal is made, the granting of a hearing to that appeal shall be governed by the following timeliness standards:

a. No change.

b. *Food assistance, medical assistance eligibility, fee-for-service medical coverage, family planning program or autism support program standard.* For appeals regarding food assistance, medical assistance eligibility, fee-for-service medical coverage, the family planning program or the autism support program, a hearing shall be held if the appeal is made within 90 days after official notification of an action. ~~For appeals regarding a health care decision made by a managed care organization, a hearing shall be held if the appeal is made within 90 days after written notification that the first-level review process through the managed care organization has been exhausted. A hearing shall be held if the appeal is made within 90 days after the appeal is deemed to have exhausted the managed care organization's appeals process, as provided in paragraph 7.2(5) "c."~~

c. *Managed care organization medical coverage.* For appeals regarding a health care decision made by a managed care organization, a hearing shall be held if the appeal is made within 120 days after written notification that the first-level review process through the managed care organization has been exhausted. A hearing shall be held if the appeal is made within 120 days after the appeal is deemed to have exhausted the managed care organization's appeals process, as provided in paragraph 7.2(5) "c."

e. d. *Offset standards.* For appeals regarding state or federal tax or debtor offsets, a hearing shall be held if the appeal is made within 15 days after official notification of the action. Counties have 30 days to appeal offsets, as provided in 441— subrule 14.4(3). When the appeal is made more than 15 days but less than 90 days after notification, the director shall determine whether a hearing shall be granted.

(1) The director may grant a hearing if one or more of the following conditions existed:

1. There was a serious illness or death of the appellant or a member of the appellant's family.
2. There was a family emergency or household disaster, such as a fire, flood, or tornado.
3. The appellant offers a good cause beyond the appellant's control, which can be substantiated.
4. There was a failure to receive the department's notification for a reason not attributable to the appellant. Lack of a forwarding address is attributable to the appellant. A hearing may be granted if an

appellant provides proof that a forwarding address was not supplied due to fear of domestic violence, homelessness, or other good cause.

(2) The time in which to appeal an offset action shall not exceed 90 days. Appeals made more than 90 days after notification shall not be heard.

(3) The day after the official notice is sent is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

~~d. e.~~ *Abuse standard.*

(1) For appeals regarding dependent adult abuse, a hearing shall be held if the appeal is made within six months after official notification of the action as provided in Iowa Code section 235B.10.

(2) For appeals regarding child abuse, a hearing shall be held if the appeal is made by a person alleged responsible for the abuse within 90 days after official notification of the action as provided in Iowa Code section 235A.19. A subject of a child abuse report, other than the alleged person responsible for the abuse, may file a motion to intervene in the hearing within 10 calendar days after the appeal notification.

(3) The day after the official notice is sent is the first day of the period within which an appeal must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

~~e. f.~~ *Displacement and discrimination standard.* PROMISE JOBS displacement and discrimination appeals shall be granted hearing on the following basis:

(1) An appeal of an informal grievance resolution on a PROMISE JOBS displacement grievance shall be made in writing within 10 days of issuance (i.e., mailing) of the resolution decision or within 24 days of the filing of the displacement grievance, whichever is the shorter time period, unless good cause for late filing as described in subparagraph 7.5(4)“a”(1) is found.

(2) An appeal of a PROMISE JOBS discrimination complaint shall be made within the time frames provided in paragraph 7.5(4)“a” in relation to the action alleged to have involved discrimination.

~~f. g.~~ *Risk assessment standard.* An appeal of a sex offender risk assessment shall be made in writing within 14 calendar days of issuance of the notice.

ITEM 2. Amend rule 441—7.16(17A) as follows:

441—7.16(17A) The appeal decision.

7.16(1) to 7.16(5) No change.

7.16(6) *Appeal of the proposed decision by the department.* The appeals advisory committee acts as an initial screening device for the director and may recommend that the director review a proposed decision. That recommendation is not binding upon the director, and the director may decide to review a proposed decision without that committee’s recommendation.

A request by the department for director’s review of the proposed decision must be made in writing. The written request must be submitted to the appeals ~~section~~ advisory committee in person or submitted through an electronic delivery method, such as electronic mail or facsimile, within ten calendar days of the date on which the proposed decision was sent. The day after the proposed decision is sent is the first day of the time period within which a request for director’s review must be filed. When the time limit for filing falls on a holiday or a weekend, the time will be extended to the next workday.

When the director grants a review of a proposed decision on the department’s request, the appeals section shall notify all other parties to the appeal of the review and send a copy of the request to all other parties. All other parties shall be provided ten calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

Written arguments or objections must be mailed or submitted in person to the appeals section or submitted through an electronic delivery method, such as electronic mail, submission of an online form, or facsimile.

The day after the notification is sent is the first day of the time period within which a response to the department’s request for review must be filed. When the time limit for responding falls on a holiday or a weekend, the time will be extended to the next workday.

7.16(7) Appeal of the proposed decision by the managed care organization. The appeals advisory committee acts as an initial screening device for the director and may recommend that the director review a proposed decision. That recommendation is not binding upon the director, and the director may decide to review a proposed decision without that committee's recommendation.

A request by the managed care organization for director's review of the proposed decision must be made in writing. The written request must be submitted to the appeals advisory committee in person or submitted through an electronic delivery method, such as electronic mail or facsimile, within 72 hours of the date on which the proposed decision was sent. The day after the proposed decision is sent is the first day of the time period within which a request for director's review must be filed.

When the director grants a review of a proposed decision on the managed care organization's request, the appeals section shall notify all other parties to the appeal of the review and send a copy of the request to all other parties. All other parties shall be provided ten calendar days from the date of notification to submit further written arguments or objections for consideration upon review.

Written arguments or objections must be mailed or submitted in person to the appeals section or submitted through an electronic delivery method, such as electronic mail, submission of an online form, or facsimile.

The day after the notification is sent is the first day of the time period within which a response to the department's request for review must be filed. When the time limit for responding falls on a holiday or a weekend, the time will be extended to the next workday.

7.16(7) 7.16(8) Appeal of the proposed decision by the appellant. When the director grants a review of a proposed decision, all other parties shall be so notified.

7.16(8) 7.16(9) Opportunity for oral presentation of appeal of the proposed decision. In cases where there is an appeal of a proposed decision, each party shall be afforded an opportunity to present oral arguments with the consent of the director. Any party wishing oral argument shall specifically request it. When granted, all parties shall be notified of the time and place.

7.16(9) 7.16(10) Time limits.

a. A final decision on the appeal shall be issued within the following time frames:

(1) Appeals for all programs, except food assistance, shall be rendered within 90 days from the date of the appeal.

(2) Food assistance-only decisions shall be rendered within 60 days.

(3) PROMISE JOBS displacement grievance decisions shall be rendered within 90 days from the date the displacement grievance was filed with the PROMISE JOBS contractee.

b. Failure to reach a decision within the time frames set forth in paragraph 7.16(9) "a" 7.16(10) "a" shall not affect the merits of the appellant's appeal.

c. Time frames may be extended based on continuances or additional time frames as approved by the presiding officer. Should the appellant request a delay in the hearing in order to prepare the case or for other essential reasons, reasonable time, not to exceed 30 days except with the approval of the administrative law judge, shall be granted and the extra time shall be added to the maximum for final administrative action.

d. For an appeal regarding child abuse, if the proposed decision is not appealed within 10 days from the date of the proposed decision, the proposed decision shall be the final agency action. If a party files an appeal within 10 days from the date of the proposed decision, the director has 45 days from the date of the proposed decision to issue a ruling. If the director does not rule within that 45-day period, the proposed decision becomes the final decision as provided in Iowa Code section 235A.19.

e. The department shall take prompt, definite and final administrative action to carry out the decision rendered within seven calendar days of receipt of a copy of the final decision. ~~When the final decision is favorable to the appellant, or when the department decides in favor of the appellant before the hearing, the department shall make any additional corrective payments due, retroactive to the date of the incorrect action.~~ for all programs, except as provided in paragraph 7.6(10) "f."

f. If the administrative law judge reverses a decision to deny, limit or delay services that were not furnished while the appeal was pending, the managed care organization must authorize or provide the

disputed services promptly and as expeditiously as the appellant's health condition requires but no later than 72 hours from the date on the proposed decision.

If the administrative law judge reverses a decision to deny authorization of services and the appellant received the disputed services while the appeal was pending, the managed care organization must pay for those services pursuant to subrules 7.9(5) and 7.9(6).

g. When the final decision is favorable to the appellant or when the department decides in favor of the appellant before the hearing, the department shall make any additional corrective payments due, retroactive to the date of the incorrect action.

~~7.16(10)~~ 7.16(11) *Final decision.* The department shall mail the final decision to the appellant at the appellant's last-known address by first-class mail, postage prepaid.

ITEM 3. Amend subrule 7.21(3) as follows:

7.21(3) *Conduct of a food assistance administrative disqualification hearing.* Hearings over disqualification of a household member for an intentional program violation shall be conducted by a presiding officer.

a. The department of inspections and appeals shall serve an Intentional Program Violation Hearing Notice upon the household member ~~both by certified mail, return receipt requested, and by first-class mail, postage prepaid, addressed to household member at the last-known address 30 calendar days before the initial hearing date.~~

b. and c. No change.

ITEM 4. Amend rule 441—7.46(17A) as follows:

441—7.46(17A) Request for review of the proposed decision. A request for review of the proposed decision shall follow the provisions outlined in subrules 7.16(5) to ~~7.16(7)~~ 7.16(8).

[Filed 4/11/18, effective 7/1/18]

[Published 5/9/18]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/9/18.